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## Proposed Regulation Agency Background Document

<b>Agency name</b>	Department of Medical Assistance Services
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 30, Chapter 120
<b>Regulation title</b>	Alzheimer's Assisted Living (AAL) Waiver
<b>Action title</b>	Establish an assisted living waiver for individuals with Alzheimer's and related dementias
<b>Document preparation date</b>	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.*

This regulatory action establishes an assisted living waiver for individuals with Alzheimer's and related dementias.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements.

## Purpose

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.*

The purpose of this action is to establish a new waiver program to provide additional services to residents of assisted living facilities who receive an Auxiliary Grant, who meet nursing facility criteria, and who have a diagnosis of Alzheimer's or a related dementia. Related dementia is defined as an individual with a diagnosis of Dementia of the Alzheimer's Type as defined by the *Diagnostic and Statistical Manual of Mental Disorders*. Individuals eligible to be placed on the AAL Waiver are currently either (a) remaining at home where a spouse or adult child is typically serving as primary care giver; (b) residing in an assisted living facility possibly without the benefit of specialized services, which are not provided for in the Auxiliary Grant payment; or (c) residing in a more restrictive setting such as a nursing facility. Through the proposed Alzheimer's Assisted Living (AAL) Waiver, recipients would be able to receive an appropriate level of care within special care units of assisted living facilities.

## Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)*

The 2004 General Assembly through Item 326.SS of the 2004 Appropriations Act mandated that the Director of the Department of Medical Assistance Services (DMAS) develop a 1915(c) Medicaid-funded Home and Community-Based Waiver for individuals with Alzheimer's or a related dementia. DMAS formed an advisory group of stakeholders to collaborate on the development of the waiver proposal. The advisory group consisted of representatives of the Virginia Department of Social Services, the Virginia Department for the Aging, State Long Term Care Ombudsman, the Alzheimer's Association, the Virginia Association of Non-Profit Homes for the Aging, the Virginia Health Care Association, Virginia Association of Area Agencies on Aging, Virginia Association for Home Care, Virginia Association of Homes for Adults, Virginia Association of Personal Care Providers, Sunrise Senior Living, Sentara Life Care Corporation, two caregivers of individuals with Alzheimer's, and DMAS. DMAS submitted a report to the Governor and the Chairman of the Joint Commission on Health Care in October 2004.

New regulations containing the policy and procedures for the AAL Waiver were developed from input that stakeholders gave in the development of the report. The regulations are contained in seven new sections under 12 VAC 30-120, Department of Medical Assistance Services, Waivered Services. The seven sections are: 12 VAC 30-120-1600 which contains definitions of AAL Waiver terms; 12 VAC 30-120-1610 which outlines individual eligibility requirements; 12 VAC 30-120-1620 which defines covered services under the AAL Waiver, 12 VAC30-120-1630 which outlines general requirements for home and community-based participating providers; 12 VAC30-120-1640 which defines participation standards for AAL waiver services participating providers; 12 VAC 30-120-1650 which outlines DMAS payment for services; and, 12 VAC 30-120-1660 which outlines DMAS utilization review of the AAL Waiver.

The AAL Waiver covers only those individuals who: have a diagnosis of Alzheimer's or a related dementia who meet the criteria for, and choose to live in, an assisted living facility; and who receive an Auxiliary Grant. By providing specialized services to eligible individuals living in an assisted living facility, the AAL Waiver is being developed as an alternative to nursing facility placement. Individuals eligible to be placed on this Waiver are currently either: remaining at home where a spouse or adult child is typically serving as primary care giver; residing in an assisted living facility possibly without the benefit of specialized services, which are not provided for in the Auxiliary Grant payment; or residing in a more restrictive setting such as a nursing facility. Through the AAL Waiver, recipients would be able to receive an appropriate level of care within special care units of assisted living facilities.

While individuals admitted to the AAL Waiver will receive services in assisted living facilities (ALF), it is important to note that individuals must also meet nursing facility admission criteria in order to receive AAL Waiver services and be diagnosed with Alzheimer's or dementia of the Alzheimer's Type. Therefore, while current ALF regulations meet the requirements for people at the regular assisted living level of care, they are not deemed to be sufficient to meet the health and welfare requirements for a Medicaid Waiver. The additional regulations are necessary to establish sufficient safeguards for this vulnerable population. Wherever possible, DMAS has worked to make these regulations consistent with the ALF regulations maintained by the Department of Social Services.

The regulations are necessary to have operational authority for the waiver, which is projected to start July 1, 2006. The effective date is contingent upon CMS approval of Virginia's application for the waiver.

**Please note: The emergency regulation contained an eligibility requirement that an individual applying for entry into this Waiver program be aged 55 or older. This requirement was referenced in 12 VAC 30-120-1610 (A), (B) and (D). After consultation with the Department of Planning and Budget and the Secretary of Health and Human Resources, DMAS has removed this eligibility requirement.**

## Issues

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

*If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.*

The Department of Medical Assistance Services was directed in Chapter 4 of the *2004 Acts of the Assembly*, Item 326 SS to develop a home and community-based care waiver for individuals with Alzheimer's and related dementias who meet the criteria for and choose to live in an assisted living facility:

"SS. 1. The Department of Medical Assistance Services shall develop, in conjunction with affected constituents, a waiver pursuant to §1915(c) of the Social Security Act (42 U.S.C. 1396n) from the Centers for Medicaid and Medicare Services to establish a home and community-based care waiver for persons with Alzheimer's and related dementias ("Alzheimer's/Dementia Assisted Living Waiver"). The Alzheimer's/Dementia Assisted Living Waiver shall be for those individuals who meet the functional criteria for admission to a nursing

facility, who have a diagnosis of Alzheimer’s or a related dementia, and who receive an Auxiliary Grant. The waiver enrollment for the first year of such program shall be limited to an enrollment of 200 individuals who are residing in or choose to move to an assisted living facility.”

This action will provide for the implementation of a new waiver program to provide additional services to individuals who meet the following criteria:

They must have a diagnosis of Alzheimer’s or a related dementia (related dementia is defined as an individual with a diagnosis of Dementia of the Alzheimer’s Type as defined by the *Diagnostic and Statistical Manual of Mental Disorders*), and be the recipient of an Auxiliary Grant, and reside in or be seeking admission to an assisted living facility (ALF), and meet nursing facility admission criteria.

Individuals eligible to be placed on the AAL Waiver are currently either (a) remaining at home where a spouse or adult child is typically serving as primary care giver; (b) residing in an assisted living facility possibly without the benefit of specialized services, which are not provided for in the Auxiliary Grant payment; or (c) residing in a more restrictive setting such as a nursing facility. Through the proposed Alzheimer’s Assisted Living (AAL) Waiver, recipients would be able to receive an appropriate level of care within special care units of assisted living facilities.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures (b)</b></p>	<p>\$1,855,000 from the general fund and \$1,855,000 from nongeneral funds in SFY 2006; \$1,947,000 from the general fund and \$1,947,000 from nongeneral funds in SFY 2007.</p>
<p><b>Projected cost of the regulation on localities</b></p>	<p>None.</p>
<p><b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b></p>	<p>The beneficiaries of the AAL Waiver meet the following criteria:</p> <p>They must have a diagnosis of Alzheimer’s or a related dementia (related dementia is defined as an individual with a diagnosis of Dementia of the Alzheimer’s Type as defined by the <i>Diagnostic and Statistical Manual of Mental Disorders</i>), and be the recipient of an Auxiliary Grant, and reside in or be seeking admission to an ALF, and meet nursing facility admission criteria.</p>

	<p>Individuals eligible to be placed on the AAL Waiver are currently either (a) remaining at home where a spouse or adult child is typically serving as primary care giver; (b) residing in an assisted living facility possibly without the benefit of specialized services, which are not provided for in the Auxiliary Grant payment; or (c) residing in a more restrictive setting such as a nursing facility. Family members of these individuals will also benefit. Providers of assisted living services will also be impacted by these regulations.</p>
<p><b>Agency’s best estimate of the number of such entities that will be affected</b></p>	<p>This Waiver is limited to 200 participants. It will take time to get individuals enrolled and receiving services in this waiver. Initially, 200 will not receive services - it will happen over a period of time. If the waiver goes well and the 200 slots are filled, there may be some effort on the part of various stakeholders (DMAS and advocacy community) to expand the program at a later time. In order for this to happen it would be necessary for the General Assembly to allocate additional funds.</p>
<p><b>Projected cost of the regulation for affected individuals, businesses, or other entities</b></p>	<p>None.</p>

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

These regulations were developed by DMAS based on the final report prepared by the advisory group for the AAL Waiver. The choices made regarding every aspect of this program were based on the health and safety needs of the targeted population being served and input by the advisory group. The mandate of the General Assembly was very specific; therefore, there were very few alternatives to this proposed regulatory action. The one option that arose in discussions with the Department of Planning and Budget and the Office of the Secretary for Health and Human Resources was to drop the eligibility requirement that individuals be aged 55 or older; the Agency has made this change in the proposed regulations.

**Public comment**

*Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.*

The Emergency regulation and Notice of Intent to Regulation were published in the Virginia Register on October 3, 2005 (VR 22:2). The Agency received no public comments.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability.*

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents. It does not strengthen or erode the marital commitment. The AAL Waiver will have a positive impact on families. By providing AAL Waiver services, the waiver will provide a less restrictive alternative to nursing facility placement for those families caring for a family member with Alzheimer’s.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

**This is a new waiver program, therefore no regulations previously existed. In addition to the substance section above, the chart below summarizes the new regulations. Changes in the regulations subsequent to the publication of the Emergency regulation are in bold type.**

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
N/A	12 VAC 30-120-1600	N/A	Definitions section: provides definitions for key terms used in the Alzheimer's Assisted Living (AAL) Waiver. <b>In the definition for “Comprehensive assessment” the reference to “assisted living facility RN” was changed to “assisted living facility staff.”</b>
N/A	12 VAC 30-120-1610	N/A	Individual Eligibility Requirements: describes eligibility criteria for entry into the AAL Waiver and placement on the waiting list.  <b>n.b. The emergency regulation contained an eligibility requirement that an individual applying for entry into this Waiver program be aged 55 or older. This was referenced in 12 VAC 30-120-1610 (A), (B) and (D). After consultation with the Department of Planning and Budget and the Secretary of Health and Human Resources, DMAS has removed this eligibility requirement.</b>
N/A	12 VAC 30-120-1620	N/A	Covered Services: describes which medical services are available to participants in the AAL Waiver.

N/A	12 VAC 30-120-1620	N/A	<b>Subsection (B)(1) was edited in the proposed regulation to clarify the requirements for medication administration. In (B)(1)(b) the word “and” was added at the end of the first sentence following “Social Security Act § 1614,” and in the third sentence the word “must” was changed to “may.”</b>
N/A	12 VAC 30-120-1630	N/A	General Requirements for Participating Providers: describes criteria for providers who provide services to AAL Waiver enrollees. <b>In subsection (F)(1) the final sentence referring to the effective date and the notification letter was deleted as redundant.</b>
N/A	12 VAC 30-120-1640	N/A	Participation Standards for Provision of Services: describes criteria for facilities that provide services to AAL Waiver enrollees. <b>DMAS modified subsection (E)(Administrators) to refer to Dept. of Social Services and Board of Long-Term Care Administrators requirements for facility administrators. DMAS also modified subsections (F)(1) &amp; (4) (Nursing Staff Requirements) to clarify these requirements. DMAS modified subsection (L) (Staff training requirements), changing the requirement that staff receive dementia-specific training from “prior to resident contact” to “within 30 days of employment.” The requirement that the trainer not be employed by the facility was dropped.</b>
N/A	12 VAC 30-120-1650	N/A	Payment for service: describes provider payment methodologies.
N/A	12 VAC 30-120-1660	N/A	Utilization review: describes this Agency process for quality management review.